IN THE SUPREME COURT FOR THE UNITED STATES

LEON WEBSTER QUILLOIN,	)	
Appellant,	)	
vs.	)	CASE NO. 76-6372
ARDELL WILLIAMS WALCOTT	)	
and RANDALL WALCOTT,	)	
Appellees.	)	

REPLY BRIEF OF APPELLANT TO APPELLEES' MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF AND THE STATE OF GEORGIA AS AMICUS BRIEF IN SUPPORT OF APPELLEES' MOTION TO DISMISS

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TABLE OF CONTENTS

		PAGE
I.	REPLY TO BRIEFS OF APPELLEES AND THE STATE OF GEORGIA	1
II.	CONCLUSION	7

TABLE OF AUTHORITIES

	PAGE
FEDERAL CASES	
STANLEY VS. ILLINOIS, 405 U. S. 645 (1972). . . .	2, 4, 7
STATE CASES	
CITY OF VALDOSTA, ET AL. VS. SINGLETON, ET AL.. . 197 Ga. 194, 208 (28 S.E.2nd 759).	5
WESTERN UNION TELEGRAPH COMPANY VS. SMITH,. . . . 96 Ga. 569 (23 S.E. 899)	5
WOJCIECHOWSKI, ET AL. VS. ALLEN, ET AL. . . . . Case No. 32012, 32013, Georgia Supreme Court (not yet reported, but attached hereto as Appendix "A")	1, 7
STATUTES	
GEORGIA LAWS, 1977, page 201 (Act No. 85, ... approved February 27, 1977)	2, 7
GEORGIA CODE §6-1002(a)	5

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The Appellees have filed a Motion to Dismiss and a brief in support thereof and Appellant hereby replies to same. The State of Georgia as Amicus has filed a brief in support of the Appellees' Motion to Dismiss for lack of a substantial federal question and the Appellant will herein reply to said brief.

This was, in fact, a case of first impression in Georgia at the time of the entry of the decision of the Supreme Court of Georgia. However, this case has become the leading case on the issues herein presented and has been applied again to the deprivation of rights guaranteed by the United States Constitution. Attached hereto and incorporated herein as Appendix "A" to this reply brief is the decision of Wojciechowski, et al. vs. Allen, et al., Case No. 32012, 32013, decided by the Supreme Court of the State of Georgia on March 10, 1977. Therefore, until January 1, 1978 this case will deprive all unwed fathers of their rights to their minor children.

It is true as stated at page 4 of the Appellees' brief that this problem will not arise in Georgia after January 1, 1978 when Georgia Laws, 1977, page 201 becomes effective. But can it be rationally argued that a case is not substantial for this Court to rule upon because it involves only the loss of two citizens of the United States of America of their minor children totally and forever? Counsel for the Appellant would argue strongly that the loss of one person's child would warrant the intervention of this Court if this Court feels that that one single person had been denied his rights to due process and equal protection under the Fourteenth Amendment to the Constitution of the United States.

The arguments of the Amicus for affirmation of the Supreme Court of Georgia and the argument of the Appellees are somewhat inconsistent with each other and are internally inconsistent. The Appellees and the Amicus would argue to this Court that the public policy of Georgia is served by denying an unwed father meaningful access to the Courts to file his petition to legitimate the minor child and thereafter object to the adoption. This argument is inconsistent in fact with what the public policy of Georgia will be in that the new adoption act for the State of Georgia, Georgia Laws, 1977, page 201, effective January 1, 1978 commencing at page 13 will give to the putative father of an illegitimate child the rights mandated by this Court in Stanley vs. Illinois, 405 U. S. 645 (1972).

The text of the relevant portion of the new act is as follows:

"(c) When notice is to be given pursuant to subsection (a) or (b) above, it shall

advise the putative father that he loses all rights to the child and will neither receive notice nor be entitled to object to the adoption of the child unless he files (1) a petition to legitimate the child pursuant to Code Section 74-103, and (2) notice of such petition to legitimate with the Court in which the adoption is pending, within thirty (30) days of the receipt of such notice.

(d) If a legitimation petition is not filed by the putative father and notice given as required in subsection (c) within thirty (30) days of his receipt of notice as provided in subsection (a) or (b) above, or if after filing such petition he fails to prosecute it to final judgment, he loses all rights to the child and he may not thereafter object to the adoption and is not entitled to receive notice of the adoption.

(e) If the child is legitimated by the putative father, the adoption shall not be permitted except as provided in Code Sections 74-403 through 405."

The Appellant in this case when he received notice of the filing of the adoption, not in legal form but through the Department of Family and Children Services, immediately contacted an attorney and the attorney filed a Petition to Legitimate said child in accordance with Georgia law and also

filed an objection to the adoption and a Habeas Corpus action. Therefore, the Appellant did everything that he would be required to do under the new act to protect his rights. The problem presented here arose from the fact that the present adoption laws of the State of Georgia did not provide him the due process of the law and equal protection of the law that he could be afforded under the new act. There was a finding of fact by the trial court that the child was not abandoned. Therefore, under the new act, the Appellant would have equal rights with married and divorced fathers; that is the right of absolute veto in such cases.

It is clear to counsel for the Appellant that the legislature for the State of Georgia was of the opinion that the public policy of the State of Georgia would be served by giving putative fathers the right to legitimate their child after the filing of an adoption action. It is also clear to counsel for the Appellant that the Georgia legislature was looking over its shoulder at this Court's ruling in Stanley and the drafting of Georgia Laws, 1977, page 201. The rationale of Stanley has clearly been promulgated into the new adoption statute. The authorities are in conflict on this question, but apparently the weight of authority is to the effect that a reviewing Court should apply the law as it exists at the time of its judgment rather than the law prevailing at the rendition of the judgment under review, and may therefore, reverse a judgment that was correct at the time it was rendered and affirm a judgment that was erroneous at the time where the law has been changed in the meantime and where such application of the law will impair no vested right under the prior law. That such is the accepted rule in this State

is shown by the following decisions. Western Union Telegraph Company vs. Smith, 96 Ga. 569 (23 S.E. 899); City of Valdosta, et al. vs. Singleton, et al., 197 Ga. 194, 208 (28 S.E.2nd 759). It can therefore be argued that in the event that this Court accepts jurisdiction but does not render a judgment in this case until after January 1, 1978, this Court will be required to reverse since Georgia's new adoption statute was not procedurally followed by the trial court or the Supreme Court of Georgia. The Appellees and Amicus may argue that rights have vested under the prior law. However, it is well settled in Georgia that the filing of a Notice of Appeal is supersedeas of the ruling of the trial court. Therefore, no vested rights can be created by this case until this court, as the final court of appeal, enters its judgment and the remittitur is returned to the trial court.

Georgia Code Ann. §6-1002(a):

"(a) Notice of appeal as supersedeas; when bond required - In civil cases, the notice of appeal filed as hereinbefore provided shall serve as supersedeas, upon payment of all costs in the trial court by the appellant, and it shall not be necessary that a supersedeas bond be filed: Provided, however, upon motion by appellee, the trial court shall require that supersedeas bond be given with such surety and in such amount as the court may require, conditioned for the satisfaction of the judgment in full, together with costs, interest and damages for delay, if for any reason the appeal

is dismissed or is found to be frivolous, and to satisfy in full such modification of the judgment and such costs, interest and damages as the appellate court may award. When the judgment is for the recovery of money not otherwise secured, the amount of the bond shall be fixed at such sum as will cover the whole amount of the judgment remaining unsatisfied, costs on the appeal, interest and damages for delay, unless the court after notice and hearing and for good cause shown fixes a different amount or orders security other than the bond. When the judgment determines the disposition of the property in controversy as in real actions, trover, and actions to foreclose mortgages and other security instruments, or when such property is in the custody of the sheriff or other levying officer or when the proceeds of such property or a bond for its value is in the custody or control of the court, the amount of the supersedeas bond shall be fixed at such sum only as will secure the amount recovered for the use and detention of the property, the costs of the action, costs on appeal, interest and damages for delay."

It cannot be argued that the Appellee step-father will lose vested rights in that he would have none absent the completion of this adoption action.

The Georgia statute that is the subject of this litigation (Georgia Laws, 1941, page 200, as amended) is repealed in its entirety by Act No. 85, Georgia Laws, 1977, page 201 (see Appendix "A" to Amicus Brief). Therefore, the public policy of the State of Georgia has changed as argued in Wojciechowski and public policy in Georgia now recognizes that natural fathers do have rights in their children and termination of both rights is required.

CONCLUSION

The precedent created by this case has been disasterously applied already in an Appellate decision in the State of Georgia and will continue to be applied in Appellate decisions in the State of Georgia perhaps with the hope that Appellate decisions will be delayed until after the effective date of the new adoption act, and therefore, the new act will be required to be applied to the factual situation then existing. This type of litigation by technicality of changing laws should not be the deciding factor in this case since one of the oldest of our laws, the Fourteenth Amendment to the United States Constitution, by giving to the Appellant in this case the right to due process of the law and equal protection of the law should be sufficient to protect the Appellant in this case without resort to the legal technicality of the effective dates of new laws. Counsel for the Appellant would again, earnestly request this Court to accept jurisdiction and review the present adoption act of the State of Georgia as it applies to the Appellant in light of Stanley and end once and for all the continuing State by State litigation of the application of Stanley to the adoption setting. Counsel for the Appellant would earnestly beg this Court to

not allow Orsini to become the law of this nation by this Court's acquiescence.

Respectfully submitted this 19th day of May, 1977.

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CERTIFICATE OF SERVICE

I, WILLIAM L. SKINNER, Attorney of Record for Leon Webster Quilloin, Appellant herein, depose and say that on the 19th day of May, 1977, I mailed an accurate copy of the REPLY BRIEF OF APPELLANT TO APPELLEES' MOTION TO DISMISS AND BRIEF IN SUPPORT THEREOF AND THE STATE OF GEORGIA AS AMICUS BRIEF IN SUPPORT OF APPELLEES' MOTION TO DISMISS in this case to Appellees' attorney and to the Assistant Attorney General for the State of Georgia by mailing to them by first class mail said document to the following addresses:

Thomas F. Jones
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Carol Atha Cosgrove
Staff Assistant Attorney General
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Atlanta, Georgia 30334

This 19th day of May, 1977.

William L. Skinner
WILLIAM L. SKINNER
Attorney for Appellant
Leon Webster Quilloin

Sworn to and Subscribed
before me this 19
day of May,
1977.

Ronald Lorgins
Notary Public
Notary Public, Georgia, State at Large
My Commission Expires Aug. 31, 1980

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Sullivan, Asbill and Brennan

426, 526 to 4

In the Supreme Court of Georgia Decided: MAR 16 1977

32012, 32013. WOJCIECHOWSKI et al v. ALLEN et al.

PER CURIAM.

The Allens petitioned to adopt the Wojciechowskis' natural child. The Wojciechowskis objected to the adoption and filed a habeas corpus action to regain the child's custody. The trial court granted the Allens' petition for adoption and denied habeas corpus relief. The Wojciechowskis appeal. We affirm.

On November 18, 1975, Sunny Lynn McEwing, now Wojciechowski gave birth to the child of Ed Wojciechowski. They were not then married. She was asked by Mrs. Elizabeth Brown, a childbirth education instructor attending her, whether she would allow Mrs. Brown's brother and sister-in-law, the Allens, to adopt her baby girl. The next day, Sunny signed a release of the child and, on November 22, 1975, a consent to the adoption. Ed, though present at both times, did not sign a consent, nor was he asked to do so. About six weeks later Sunny executed and filed a retraction of consent and Ed filed a refusal to consent. They were married February 28, 1976.

1. The first enumeration of error raises the question of the constitutionality of Code Ann. § 74-403 (3) which requires only the mother's consent for the adoption of an illegitimate child. We have recently upheld the constitutionality of this section in Quilloin v. Walcott, Ga. (SE2d) (Case No. 31643, decided January 6, 1977), and reaffirm that decision here. The natural father of an illegitimate child has no rights in that child. Therefore, there was no requirement that Ed Wojciechowski consent to the adoption of the child by the Allens.

The Wojciechowskis argue, however, that since Quilloin the public policy of the State has changed with the enactment of Act No. 85 (Ga. L., 1977, pp.), which was signed by the Governor on February 25, 1977. The new Act entirely repealed the present adoption law (Ga. L. 1941, p. 300, as amended) and now recognizes that natural fathers do have rights in their children

and termination of those rights is required. Under City of Valdosta v. Singleton, 197 Ga. 194 (28 SE2d 759) (1944), they invite us to recognize a change in public policy and require Ed Wojciechowski's consent. We note that the effective date of the new Act is January 1, 1978. Thus, the present law is as articulated in Quilloin, and this court is without authority to alter it. The decision of the trial court on this issue must be affirmed.

2. The Wojciechowskis next urge that under California law, the child was not illegitimate. California law must be applied to this determination since the child was born in California and her natural parents resided there. Smith v. Smith, 224 Ga. 442 (162 SE2d 379) (1968); King v. King, 218 Ga. 534 (129 SE2d 147) (1962).

California Civil Code § 230[1], relied upon by the Wojciechowskis, provides: "The father of an illegitimate child, by publicly acknowledging it as his own, receiving it as such . . . into his family, and otherwise treating it as if it were a legitimate child, thereby adopts it as such; and such child is thereupon deemed for all purposes legitimate from the time of its birth . . . ."

[1]The law cited above was repealed effective December 31, 1975. Under the current California law, the natural father's consent would be required. Cal. Civil Code § 7004.

In Truschke v. LaRocca, 46 Cal. Rptr. 601 (1965), the California Supreme Court held that this section required a showing (1) that the father publicly acknowledged the child, (2) that he received it into his home, and (3) that he treated the child as his own legitimate child, and that the code section should be strictly construed.

The natural parents here urge in support of their argument Lavell v. Adoption Institute, 8 Cal. Rptr. 367 (1960), where the father's right to the child was recognized, even though the mother left his home a few days prior to its birth, because the parents had lived in a de facto family status. The trial court in this case, however, found that even though the parents had lived together for over a year prior to the child's birth that the father had never intended to recognize it as a family member because the child's grandparents were not notified of its pending birth and because no preparations had been made at their apartment to receive the child. In the face of conflicting evidence, the trial court's finding of fact must be accepted by this court. Perkins v. Courson, 219 Ga. 611 (135 SE2d 388) (1964). We,

therefore, hold that the child was not legitimated under Cal. Civil Code § 230. Enumeration of error 2 thus does not require a reversal of the judgment.

3. In enumerations of error 3 and 4, the Wojciechowskis challenge the validity of the consent to the adoption by Sunny, the child's mother. They claim the consent was invalid because it was obtained in violation of California law and because it was not freely and voluntarily given. We find that these enumerations also are dependent on fact determinations made adversely to the Wojciechowskis by the trial court, which, though based on conflicting evidence, do not amount to an abuse of discretion by that court and present no grounds for reversal. Perkins v. Courson, supra.

4. The fifth and final enumeration of error raises the question whether the trial court erred in holding that once the consent was executed, the comparative rights of both the natural and adoptive parents must be considered. Since we have already held that the consent of the mother was valid and the consent of the father was not required, the petition of the adoptive parents

was properly granted. The natural parents thus suffered no further harm by this comparison even if this enumeration raises a possible error by the trial court.

The trial court did not err in granting the Allens' petition for adoption and denying the Wojciechowskis' petition for habeas corpus.

Judgment affirmed. All the Justices concur except Undercofler, P.J., Gunter and Ingram, J.J., who dissent.

(6)

426, 526 to 4

32012, 32013. WOJCIECHOWSKI et al. v. ALLEN et al.

UNDERCOFLER, Presiding Justice, dissenting.

I would reverse under my dissent in Quilloin v. Walcott, 238 Ga. (SE2d) (1977). I am authorized to say that Gunter and Ingram, JJ. join in this dissent.